

# **Exhibit 2**

### **Declaration of John Dailey**

1. My name is John Dailey. I am currently incarcerated at the Butner LSCI, in housing unit Granville A, at FCC Butner. My Bureau of Prisons Register Number is 39637-044.

2. I am 62 years old.

3. I entered custody in September 2019. I am currently serving a 27-month sentence for medicare fraud. I have one prior conviction for fraud arising out of the same set of circumstances.

4. In 2017, I was diagnosed with an aggressive form of mycosis fungoides, a very rare form of non-Hodgkins lymphoma. Only about 400 people are diagnosed with this cancer in the United States each year and there are few doctors with experience treating it. There is no cure for this cancer. The treatment is to keep the patient comfortable and try to prevent lesions from forming. Lesions start as a rash and develop into open wounds. The more that lesions develop, the sooner the cancer will metastasize to the brain and bones. This form of cancer is terminal.

5. After my diagnosis, my team of doctors who have experience treating this form of cancer tried eight different kinds of chemotherapy on me, and I was in two different medical trials. Before they found a treatment that controlled the lesions for me, 45% of my body was covered by them. The chemotherapy finally removed the lesions and I was on a maintenance medication that was keeping me clear of lesions, Targretin. I was taking this medication when I entered custody and had no lesions at that time.

6. I first went to a detention center in September 2019. Upon entry into custody, I was given the generic version of this medication and had an allergic reaction to it, including shortness of breath, petechiae and pruritic dermatitis. After I had the allergic reaction, I was given the Targretin that I had brought with me to the jail.

7. In November 2019, I was sent to Butner FMC from the jail. The staff at Butner FMC prescribed the generic version and I repeatedly told them that I had had an allergic reaction to it in the jail and needed to take Targretin. The staff did not change the prescription. I did not take the medication because I was afraid that I would go into anaphylactic shock and would not be able to get help in time. All my medication has been discontinued. The staff has told me that they will not give me any other medication for my cancer.

8. I am immunosuppressed because of the cancer and the chemotherapy that I had.

9. I have a port in my chest that was placed there for a particular aspect of the treatment I received. It is not the standard type of port that is used in chemotherapy and many doctors are not familiar with it. It needs to be flushed monthly. It has not been flushed since August 2019.

10. I have a congenital heart defect. It was aggravated by the chemotherapy and the damage from that aggravation remains. I passed out roughly a dozen times during the period I was undergoing chemotherapy. I have passed out once since I arrived at Butner, and nearly passed out another time.

11. I also have a hernia. A request for consultation for surgery was recently made by the general doctor at LSCI Butner, but the request was denied.

12. I was moved from FMC Butner to LSCI Butner in early February 2020.

13. I am housed in a dormitory-style housing unit of 162 men. We live in cubicles that are about 11' x 7'. There are 3 people in my cubicle.

14. A small number of cubicles in the housing unit have two people in them. About 85% of the cubicles have three people in them, two in a bunk bed and one on a single bunk. There is only about a 3.5' x 6' space to move around in the cubicles.

15. There are about 50 cubicles in my housing unit, one right next to the other. Every cubicle is occupied.

16. I sleep within about six feet of seven or eight people.

17. All 162 people in the housing unit share about 16 toilets, 12-14 showers, and 10 sinks. The toilets are less than 3 feet from each other. The showers are about 3 feet from each other. The sinks are less than 2 feet from each other. People are on top of each other in the bathrooms.

18. To use the sink, I must turn the faucet handle that many other people have touched, and I must touch it again, after washing my hands, to turn it off.

19. Although the bathrooms are cleaned each morning, they become very dirty very quickly because so many people are using them. There are tiny flies everywhere.

20. I now have six lesions that are open wounds. I have to change the dressing on them every day or two. I have to do this in a bathroom stall.

21. Meals are brought to the housing unit on a cart three times a day. Everyone has to line up to get their meals. People in the lines are right on top of each other, with less than a foot space between them. When we go to throw away the trash, we all have to go to the same place as each other to throw the trash into a big bag. We don't line up, but are all walking past each other very close together.

22. Pill call happens three times a day. People line up with little space between them.

23. There are seven working phones for the housing unit. They are less than two feet apart. People line up to use the phones. There is no social distancing in the phone lines.

24. There are five computers in a computer room for use by the men in the housing unit. Four of them are on one side of the room, with one to one and a half feet

between them. These are used for email. The fifth is on a different side of the room for legal work. They computers are pretty much always in use from 6:00 a.m. until 11:30 p.m.

25. People line up outside the computer room and also mill around near it, waiting for their turn to use a computer. There are also chairs in the area outside the computer room where people sit so that they can watch the television in the TV room. The TV room itself is closed, so this is where people sit if they want to watch it. The people are all very close to each other in the area just outside the computer room.

26. We were given cloth masks. Mine does not fit well and falls off my face.

27. Most but not all staff wear masks.

28. There has been no widespread testing for coronavirus in my housing unit.

29. Until the week of May 11, if a person in the housing unit thought he might have a fever, the only way for him to get checked was by putting in a request for sick call. Sick call costs \$2.

30. During the week of May 11, medical staff started taking the temperature of everyone in my housing unit twice a day. Eleven people have been removed from my housing unit this week because they are believed to have COVID-19. They were all taken to solitary confinement, also called the Special Housing Unit or SHU. One of the men has died.

31. Correctional officers talk about there being people who have COVID-19 in the SHU. They talk about people being infected in other housing units.

32. It is my understanding that the HVAC system circulates the same air throughout the facility.

33. About 25 people in my housing unit have jobs that take them off the unit. They go to their jobs and work with people from other housing units. I know this because they tell me about their conversations with people from other units.

34. There is one person in my housing unit who is the orderly in the SHU. He goes and cleans up in the SHU, where the people who have COVID-19 are being housed, and then comes back to our housing unit.

35. Correctional officers and other staff move between housing units. For example, during count, the officers in our housing unit go to help the officers in the unit next to ours, and the officers from the next unit over help the officers in our unit.

36. I have filed 60 BP-8 grievances since I've been at Butner. I have received written responses to six of them.

37. On May 1, 2020, a paper notice was posted in my housing unit informing us that there was a delay in processing Administrative Remedies requests.

38. On April 23 or 24, 2020, I signed some papers notifying me that I had been approved some kind of transfer based on the risk to me from COVID-19. I have recently been told I will be moved to a halfway house in August.

39. I'm aware of just a few people who have been released due to the medical condition. Each of them was within a few weeks of their release date.

40. I can live at my home in Las Vegas, Nevada with my wife if I am released to home confinement. I would be able to self-isolate in the house 14 days and I would have access to the medical care I need. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

41. I am filing this lawsuit to make FCC Butner change its policies and practices relating to the protection of the people in its custody from the risk from COVID-19. I am committed to trying to make that happen. I understand that being a class representative in this lawsuit means I will have to make decisions not just in my own interest, but also in the interest of the other people in the class, and I accept that

responsibility.

I, Maria Morris, certify that I reviewed the information contained in this declaration with Mr. Dailey by telephone on May 17, 2020, and that he certified under penalty of perjury that the information contained in this declaration was true and correct to the best of his knowledge.

/s/ Maria V. Morris

Maria V. Morris  
American Civil Liberties Union  
915 15<sup>th</sup> St., 7<sup>th</sup> Floor  
Washington, DC  
202.548.6607  
[mmorris@aclu.org](mailto:mmorris@aclu.org)